

TO: Deputy Chief Steve Bell
FROM: Legal Services, Ottawa Police Service
DATE: January 28, 2022

RE: Trucker Convoy Demonstration

MEMORANDUM

FACTS

On January 23, 2022, in response to the federal government's new vaccine mandates for cross-border truckers, several hundreds of big rig trucks have created a convoy and plan to descend into the downtown core of the City of Ottawa as early as January 28, 2022. The convoy, also known as the "Freedom Rally", intends to protest/demonstrate on Parliament Hill.

The Ottawa Police Service ("OPS") has been coordinating with local law enforcement agencies and partners, including the Royal Canadian Mounted Police ("RMCP") and the Parliamentary Protective Service ("PPS") in anticipation of the convoy's arrival.

At this time, there is no clear indication as to how many vehicles or demonstrators will be in attendance, nor is there any indication as to how long the demonstration will last. Recent estimates indicate that there could be approximately 1000-2000 vehicles, and 5000-6000 demonstrators. It is anticipated that this will be a significant and extremely fluid event.

While the convoy has not yet reached the City of Ottawa, various considerations will need to be assessed, and reassessed, to determine the appropriate response, including:

- the balancing of competing *Charter* rights;
- impacts to public enjoyment and the right to mobility;
- impacts to health and safety;
- impacts on obstructing emergency vehicles; and
- impacts to public safety generally.

Given the fluidity and lack of concrete details surrounding this event, this memorandum constitutes a preliminary assessment. Legal Services will continue to conduct research and will reassess and revise this memorandum as the situation evolves.

While legal authorities are provided herein, organizational objectives for demonstrations ought to be considered in guiding any response, including:

- maintain public order and preserve the peace;
- remain neutral where possible and facilitate the building of trust between police, participants and the community;
- ensure the safety and security of the public and emergency services personnel;

- minimize disruption for Ottawa residents, businesses and visitors;
- identify and assess threat and risk, and develop contingency plans to mitigate where required;
- provide security commensurate to the threat level; and
- enforce laws and investigate offences where warranted while respecting the democratic freedoms of thought, belief, opinion, expression and peaceful assembly.

ISSUES

1. What legal considerations are at issue?
2. What legal authorities and/or enforcement authorities are available to the OPS?
3. In the event of a police response, how best can the OPS respond to Indigenous demonstrations?

BRIEF RESPONSE

1. Given that the convoy has not yet reached the City of Ottawa, it is difficult to assess the full range of legal considerations that may be at issue. Despite this, it is clear that this matter raises issues related to freedom of expression and lawful assembly, and therefore may have *Charter* implications. Similarly, given the type of demonstration that is anticipated, mobility rights of other members of the public are also likely to be engaged. In addition, as there may be demonstrators who are Indigenous, there may be heightened concerns surrounding any active enforcement measures and recognizing the uniqueness of Indigenous occupations.
2. The enforcement authorities available to the OPS will vary depending on the circumstances and, therefore, the police response must be fact-driven and fact-specific. Should the OPS determine that the public interest requires immediate action due to possible public safety risks (increased risk of collision, distraction of other motorists, obstruction of emergency vehicles, restriction of essential services and processes within society, etc.) several provisions of the *Criminal Code* may be applicable in the circumstances, including recent amendments to the *Criminal Code* with respect to health services intimidation, as well as interfering with access to health facilities. Furthermore, provisions of the *Highway Traffic Act* and seeking injunctive relief may also be appropriate in the circumstances.
3. A review of the Ipperwash Inquiry Report and various other sources provide guidance to help inform OPS responses to Indigenous demonstrations. These sources emphasize that the police ought to develop communication networks and trusting relationships with Indigenous peoples. This involves collaboration and partnership with Indigenous leaders and communities. In the event there are Indigenous demonstrators present, Indigenous leaders may be consulted to ensure that any police response considers the uniqueness of Indigenous occupations. It is our understanding that the Ontario Provincial Police (“OPP”) have offered expert resources in this regard—these resources would be of great assistance.

DISCUSSION

A. Legal considerations at issue

The legal framework with respect to policing demonstrations and protests is complex. In accordance with section 42 of the *Police Services Act* (“PSA”), police officers have a sworn duty to preserve the peace, prevent offences, enforce the law, protect property, preserve life and protect against serious injury—among other obligations. In order to fulfill these duties, police officers are granted certain powers through the common law and various statutes, including the *Criminal Code*.

In fulfilling their mandate, police officers must also consider the *Canadian Charter of Rights and Freedoms* (“Charter”), which guarantees certain rights and fundamental freedoms, including freedom of thought, belief, opinion, expression, peaceful assembly, and mobility.

These sections of the *Charter* are set out as follows at sections 2 and 6:

2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

[...]

6 (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province; and
- (b) to pursue the gaining of a livelihood in any province.

In interpreting the freedom of expression, the Supreme Court of Canada has opined that this freedom does not protect unlawful conduct:

That freedom, of course, would not extend to protect threats of violence or acts of violence. It would not protect the destruction of property, or assaults, or other clearly unlawful conduct.

RWDSU v. Dolphin Delivery Ltd., 1986 CanLII 5 (SCC), [1986] 2 SCR 573 at para 20.

Picketing which breaches the criminal law or one of the specific torts like trespass, nuisance, intimidation, defamation or misrepresentation, will be impermissible, regardless of where it occurs.

R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd., 2002 SCC 8 (CanLII), [2002] 1 SCR 156 at para 77.

Similarly, the Ontario Court of Appeal, in the context of reviewing an order that granted an injunction, indicated that the right to picket does not encompass the right to obstruct travel on a roadway.

The second ground advance in support of the stay is to the effect that the defendants are entitled to impede or delay traffic by stopping cars for short periods in furtherance of their acknowledged right to picket in the course of their lawful strike. We have set out the terms of the order. It is clear that this order does not, as suggested, constitute a ban on picketing. Nor can the order be said to be analogous to a ban. The striking employees remain fully entitled to peacefully picket the plaintiffs premises in the locations where they have been doing so. They are restrained only from engaging in the type of conduct specified in the order, in particular, from interfering with or blocking or physically obstructing or delaying any person or vehicle from entering or exiting the property. The prohibition is against engaging in conduct of that nature.

Ogden Entertainment Services v. Retail, Wholesale/Canada, 1998 CanLII 1441 (ON CA) at para 8.

This principle was later applied by the Superior Court of Ontario in *Long Lake Forest Products*, wherein the Court referred to the *Ogden* decision and stated:

The right to picket does not encompass the right to obstruct travel on the roadways. The Ontario Court of Appeal agreed that blocking a highway created a nuisance in *Ogden Entertainment Services v. Retail, Wholesale/Canada Canadian Service sector Division of the United Steelworkers of America, Local 440* 1998 CanLII 1441 (ON CA), [1998] O.J. No. 1824.

Long Lake Forest Products Inc v. United Steelworkers Local 1-2693, 2006 CanLII 34442 (ON SC), at para 36.

Therefore, while the case law indicates that those who wish to protest have a *Charter*-protected right in doing so, it is not without limits. These limits, as the courts have recognized, prevent threats of violence, acts of violence, and unlawful conduct. Moreover, these limits also prevent demonstrators from obstructing travel on roadways. It is worth noting, however, that there has been at least one decision where it was found that a blockade for a very brief period only constituted a minor inconvenience and was therefore permissible.

As such, where individuals or groups do not hinder or obstruct vehicular traffic for extended periods, they maintain the right to protest in so far that it does not engage or entail unlawful conduct.

B. Enforcement authorities available to the OPS

General authorities

The enforcement authorities available to the OPS will vary depending on the circumstances and, therefore, the police response must be fact-driven and fact-specific. It should be noted, however, that while the OPS is anticipated to be on-site to keep the peace, the OPS maintains its duty to enforce the law and in so doing must ensure that police discretion is exercised *reasonably*, in good faith, rationally, supportable on an objective basis, and not for an improper or arbitrary purpose (i.e. political reasons).

Metropolitan Toronto (Municipality) Police Services Board v. Metropolitan Toronto Police Assn., 1992 CanLII 8681 (ON CA)

In the event that the OPS determines that the public interest requires immediate action to address safety concerns, which may include, for example, increased risks of collisions, distraction of other motorists, obstruction of emergency vehicles, restriction of essential services, various provisions of the *Criminal Code* may be applicable in the circumstances.

Criminal Code of Canada

Mischief (section 430 of the Criminal Code)

The offence of mischief is set out in the *Criminal Code* as follows:

- 430 (1)** Every one commits mischief who wilfully
- (a) destroys or damages property;
 - (b) renders property dangerous, useless, inoperative or ineffective;
 - (c) **obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or**
 - (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

In order to make out the offence of mischief, it is important to establish that the individual wilfully engaged in conduct outlined in section 430(1). Actions which create slight inconveniences do not constitute mischief. However, it has been found that where slight inconveniences interfere with or interrupt the lawful use or enjoyment of property, this conduct may amount to criminal mischief.

R. v. Mayer [1994] Y.J. No. 142

Courts have also found that picketing an employer's place of business does not constitute mischief. The offence requires proof of some physical act on the part of the accused which operates as, or has the effect of, causing some sort of obstruction, interruption, or interference with the use or enjoyment of the property that goes beyond the mere communication of information through picketing.

R. v. Dooling, (1994) 94 C.C.C. (3d) 525 (Nfld. S.C.)

This offence is extremely broad and includes destroying, damaging or rendering property inoperative, or preventing, or interfering with its lawful use. As such, while an assessment will be required and will be fact-specific, it is likely that the offence of mischief could occur as the convoy settles into the City of Ottawa.

Intimidation: blocking or obstructing a highway (section 423(1)(g) of the *Criminal Code*)

The offence of *intimidation* by blocking or obstructing a highway is set out as follows in the *Criminal Code*:

423 (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, *wrongfully and without lawful authority*, for the *purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do*, or to do anything that he or she has a lawful right to abstain from doing,

[...]

(g) blocks or obstructs a highway.

Courts have interpreted this section to include those who stand on the road in order to prevent the passage of someone who has the lawful right to be on the road. The Court in *Interfor* noted that:

“There should be little doubt, if any at all, that the offence prescribed by s. 423(1)(g) is committed when a person digs a ditch across a road, litters a roadway with debris comprised of wood, rocks and other materials, stands on the road or perches in a tripod mounted in the middle of a roadway in order to prevent the passage of someone who has the lawful right to be on the road.”

Interfor v. Kern et al., 2000 BCSC 1141 (CanLII) at para 73.

While this provision may be applicable in some circumstances, please see below for intimidation of health care workers and/or interfering with access to health facilities.

Obstructing a peace officer in the execution of their duties (section 129 of the *Criminal Code*)

The offence of resisting or wilfully obstructing a police officer is set out in the *Criminal Code* as follows:

129 Every one who

(a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

- (b) omits, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so, or
- (c) resists or wilfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure [...]

This section creates an offence of wilfully obstructing or resisting a peace or public officer, or a person assisting that officer in the execution of their duties. This provision may very well be applicable in the event of any active police response.

Riots

Unlawful assembly (section 63 of the *Criminal Code*)

The offence of unlawful assembly is set out in the *Criminal Code* as follows:

63 (1) An unlawful assembly is an assembly of three or more persons who, *with intent to carry out any common purpose*, assemble in such a manner or so conduct themselves when they are assembled as to *cause persons in the neighbourhood of the assembly to fear, on reasonable grounds*, that they

(a) will disturb the peace tumultuously; or

(b) will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously.

In order to make out the offence, it must be demonstrated that the assembly has gathered together *with the intention to carry out a common purpose*, and that the *fears* of those in the area of the assembly are based on reasonable grounds. A “tumultuous disturbance” requires an air or atmosphere of actual or constructive force of violence.

A riot is an unlawful assembly. To prove a riot, it is essential that there be actual or threatened force and violence, in addition to public disorder, confusion and uproar. The accused must be shown to have intended to be a participant and to have taken part in the disturbance (intention can be inferred through being reckless). What differentiates a riot from an unlawful assembly is that a riot entails an actual, tumultuous disturbance of the peace, whereas an unlawful assembly requires only the reasonable fear that such a disturbance will erupt.

The Courts have held that a grievance against the authorities does not provide a legal right to occupy a roadway, which is a public highway over which all members of the public are entitled to traverse.

R. v. Thomas (1971), 2 C.C.C. (2d) 514 (B.C. Co. Ct.)

R. v. Bernitt (1997), 120 C.C.C. (3d) 344 (B.C.C.A.)

Breach of the peace (section 31 of the *Criminal Code*)

Section 31 of the *Criminal Code* provides that:

31 (1) Every peace officer who witnesses a breach of the peace and every one who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

Police officers have the authority to detain individuals who commit a breach of the peace, and also have the ability to disperse protests that breach the peace. In addition, police officers can make arrests when they find someone committing a breach of the peace, or to prevent that person from committing a breach of the peace (breach of the peace is not a charge in and of itself). The individual must be released as soon as the risk of his or her committing a further breach of the peace has passed, and should not exceed 24 hours.

The concept of “breach of the peace” tends to involve some disturbance or threat or tumultuous and riotous activity. The Supreme Court of Canada opined has referred to a breach of the peace as follows:

“[a]n act can be considered a breach of the peace only if it involves some level of violence and a risk of harm. It is only in the face of such a serious danger that the state’s ability to lawfully interfere with individual liberty comes into play. Behaviour that is merely disruptive, annoying or unruly is not a breach of the peace.”

As a reminder, and in the context of protests and demonstrations, the Supreme Court of Canada recently ruled that police officers do not have the authority to arrest someone engaging in lawful conduct to prevent a breach of peace by others.

Flemming v. Ontario, 2019 SCC 45

Hospital and healthcare workers

Bill C-3 was introduced by the federal government in response to widely reported protests at or near healthcare facilities against COVID-19 measures. Throughout the fall of 2021, health care sector groups called for more robust protections for health care workers in light of an observed spike in intimidation and harassment of those workers during the pandemic.

The new offences contained in Bill C-3 targets conduct largely already captured by the existing offences of mischief to property (section 430) and intimidation (section 423). The purpose is to provide further protection for health sector workers—and those receiving healthcare—by singling them out for dedicated treatment, and subjecting offences against them to higher maximum penalties than are available for existing offences.

Intimidation—Health Services

Section 423.2(1) of the *Criminal Code* makes it an offence to engage in any conduct with the intent to provoke a state of fear in:

- (a) a person in order to impede them from obtaining health services from a health professional;
- (b) a health professional in order to impede them in the performance of their duties; or
- (c) a person who assists a health professional in performing their duties, in order to impede them from assisting.

A “health professional” is defined as a person “entitled under the laws of a province to provide health services” (section 423.2(5)), which, in Ontario, includes physicians, nurses, occupational therapists, and pharmacists, among others.

Interfering with Access to Health Facilities

Section 423.2(2) of the *Criminal Code* makes it an offence to intentionally obstruct or interfere with a person’s lawful access to a place at which health services are provided by a health professional.

The provision suggests that the offence is triggered where the conduct makes lawful access more difficult, rather than conduct that makes access impossible. In essence, the obstruction or interference must only rise beyond a “minor impact” or “minor delay” in access to health services for this offence to be made out.

Ministry of the Attorney General (Criminal Law Division), Police Memorandum,
January 13, 2022.

Highway Traffic Act

Section 134 of the *Highway Traffic Act* (“HTA”) provides police officers with the ability to direct traffic in specific circumstances and is set out as follows:

134 (1) Where a police officer or an officer appointed for carrying out the provisions of this Act considers it reasonably necessary,

- (a) to ensure orderly movement of traffic;
- (b) to prevent injury or damage to persons or property; or
- (c) to permit proper action in an emergency,

he or she may direct traffic according to his or her discretion, despite the provisions of this Part, and every person shall obey his or her directions.

Furthermore, section 134.1 of the *HTA* provides police officers with the power to remove a vehicle in specific circumstances:

134.1 (1) Where a police officer considers it reasonably necessary,

- (a) to ensure orderly movement of traffic; or

(b) to prevent injury or damage to persons or property,

he or she may remove and store or order the removal and storage of a vehicle, cargo or debris that are directly or indirectly impeding or blocking the normal and reasonable movement of traffic on a highway and shall notify the owner of the vehicle of the location to which the vehicle was removed.

In accordance with section 134.1 of the *HTA*, the cost of the removal and storage of the vehicle are a debt due by the owner, and no action or other proceeding for damages shall be brought against a police officer or police services board for any act done in good faith in the performance or intended performance of a duty under this section.

While provisions of the *HTA* may find application in the circumstances, their enforcement may be limited on practical grounds. Issues such as capacity to tow the sheer amount of anticipated big rig trucks, as well as identifying storage locations, may present difficulties.

Injunction

An application for an injunction would allow the courts to assess the facts and make the ultimate decision as to what action is required in the circumstances. If the court were to deny the injunction, this would constitute advanced warning that would otherwise flow from any action.

If the police are required to act, it would be done pursuant to a court order. While obtaining an injunction may take time, it would alleviate some risk.

Trespass to Property Act

Although there may be legal considerations with respect to enforcing the *Trespass to Property Act*, this will need to be assessed and enforced by the respective occupier as they arise.

Public Works Nuisance Regulation

While enforcement on the lawn of Parliament Hill will likely be conducted by the RCMP and/or the PPS, the following review and assessment is provided for the sake of thoroughness, and also provides guidance in terms of how the Court assessed the reasonableness of the removal of structures erected on Parliament Hill.

The *Public Works Nuisances Regulations* has been used to remove protesters from public property. The constitutionality of this was considered in *Weisfeld v. Canada*, 1994 FCA,

where anti-cruise missile activists set up tents and tables on the Parliament Hill lawn in a series of incidents from 1983 to 1988.

The Court found that the erection of structures on public property by private citizens is within the scope of the expression protected by s. 2(b) of the *Charter*, which was violated in this case by the government in demanding the removal of the structures pursuant to the *Regulations*. However, it was found to be a reasonable limit under s. 1 of the *Charter* and upheld as constitutional.

The government objectives articulated by the Court were:

- (a) safety, health, maintenance and security;
- (b) aesthetics and symbolism; and
- (c) preventing permanent damage to the symbolic importance of Parliament Hill.

These were the factors considered by the Court in the proportionality/minimal impairment analysis:

Safety, health, maintenance and security

The shelters constituted a danger: a fire hazard because of open-flame cooking, a health hazard because of the absence of sanitary facilities, and to the infestation of the structures with insects.

Actual damage to lawn

Imposed an additional burden on the security forces responsible for the security of the Parliament Buildings.

Aesthetics and symbolism

Majesty and grandeur of Parliament.

Major tourist attraction.

Keeping it clean and aesthetically pleasing so that Canadians and visitors can enjoy it.

Protesters' camp seen as an "eyesore"/"blemish".

Symbolic importance.

Dignity and decorum.

Long term damage to functioning of the forum.

C. Ipperwash Inquiry Report and various other sources that provide recommendations to police on preparing for and responding to Indigenous protests

The Ipperwash Inquiry Report: recommendations to police on preparing for and responding to Indigenous protests

The Ipperwash Inquiry Report is a comprehensive, 1533-page document which details the findings of an inquiry into the death of Mr. Dudley George and the Ipperwash crisis. The Report provides a number of recommendations to police in preparing for and responding to Indigenous protests and occupations.

Preparing/planning for Indigenous protests

Throughout the report, emphasis is placed on the police developing communication networks and trusting relationships with Indigenous peoples. This involves, the report explains, collaboration and partnership with Indigenous leaders and communities.

The Report recommends that police establish a communication strategy for conveying important messages to protestors and the technical aspects of such communication. In Canadian Civil Liberties Association v. Toronto Police Service 2010 ONSC 3525, the Court considered this recommendation when rendering a decision relating to police communication with crowds.

The Report further recommends that police specify individuals outside the police service who can effectively communicate with Indigenous protestors, such as Elders or other persons of stature.

Training for responding to Indigenous protests, the Report suggests, should focus on the requirements for peacekeeping, communication, negotiation and building trust, both generally and with respect to specific incidents. The Report states that building the capacity to respond to Indigenous protests means ensuring that the police service has dedicated leadership and officers who are trained in Indigenous history, law, and customs.

Responding to Indigenous protests

The Report advocates for policing strategies that address the uniqueness of Indigenous occupations and protests, with particular emphasis on the historical, legal and cultural differences of such incidents. According to the Report, police should ensure the assistance of First Nation conciliators when responding to Indigenous occupations and protests.

The Report states that the most appropriate role for the police in the context of Indigenous protests is to restore and maintain order so that parties can negotiate solutions. With a view to avoiding the use of force, the Report explains that the objectives of police services during Indigenous protests should be the following:

- a. minimize the risk of violence at occupations and protests;
- b. preserve and restore public order;
- c. facilitate the exercise of constitutionally protected rights;
- d. remain neutral as to the underlying grievance; and
- e. facilitate the building of trusting relationships that will assist the parties to resolve the dispute constructively.

In order to achieve these objectives, the Report outlines some suggested methods:

- a. patience, listening, and good-faith communication;

- b. identify an appropriate person, such as an Elder, to meet with the protestors and act as a conciliator;
- c. recognizing that pride and theatre are important aspects of Indigenous protest, allow protestors to withdraw in such a way that they are able to achieve some of their goals and preserve their dignity; and
- d. utilize strategic police discretion, including to delay the enforcement of an injunction or the laying of charges in the interests of public safety/order.

The Report outlines several factors to inform the provincial government's response to Indigenous protests, but they may also be useful for police decision-making processes:

- a. risks to public safety;
- b. the willingness or capacity of protestors or the First Nation to negotiate;
- c. the likelihood of a constructive, peaceful, timely agreement; and
- d. the social or economic disruption caused by the occupation.

Impact of territory being uncaded

Uncaded territory is land that was never legally transferred to the government by Indigenous peoples. It is unlikely that a protest, or a police response to a protest, will be affected from a legal perspective by whether the land on which it takes place is uncaded. Recent decisions dealing with pipelines in British Columbia have granted injunctions on uncaded territory. Nevertheless, the fact that a protest takes place on uncaded territory may be of symbolic importance to protestors.

Impact of *UNDRIP*

The *United Nations Declaration on the Rights of Indigenous Peoples* ("*Declaration*") is an international instrument on the rights of Indigenous peoples. Initially, when the *Declaration* was passed in 2007, four countries voted against the declaration: Australia, Canada, New Zealand and the United States.

On June 21, 2021, Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* received Royal Assent and became law. According to the Department of Justice Canada: "This legislation advances the implementation of the *Declaration* as a key step in renewing the Government of Canada's relationship with Indigenous peoples. The purpose of this Act is to affirm the *Declaration* as an international human rights instrument that can help interpret and apply Canadian law. It also provides a framework to advance implementation of the *Declaration* at the federal level."

Handling sacred Indigenous property

The Canada Conservation Institute's [guide to caring for sacred and culturally sensitive objects](#) describes sacred items as follows:

Sacred objects are objects of Indigenous material culture that are deemed holy or sacrosanct by virtue of their ritual or ceremonial associations. Depending upon the group in question, these can include a range of objects connected with drumming, dancing, smoking rituals, vision questing, fasting or traditional healing and sweat

lodge rites. Within the originating Indigenous culture, access to objects of this sort is frequently restricted upon the basis of age, sex, achievement or prior initiation.

The Ontario Human Rights Commission states that organizations should take proactive measures to prevent and mitigate negative impacts on Indigenous peoples' spiritual practices by developing policies and procedures to ensure sacred items are not inappropriately handled or denied access to.

The Carleton University *Guidelines for Working with First Nation, Metis and Inuit Elders and Knowledge Keepers* emphasize consent before touching an item of significance:

Often [E]lders or [K]nowledge [K]eepers will carry sacred items, such as pipes, hand drums, quill, eagle feathers or medicine bundles. They might also be wearing regalia or other clothing items of spiritual or ceremonial significance. Always ask permission before touching or picking up a sacred item or cultural clothing piece and respectfully seek clarification if there is something you do not understand.

Medicine Bags

The Vancouver Police Department *Cultural Considerations in Searches of a Person Guide* (reviewed and supported by local Indigenous leaders, later incorporated into their Regulations and Procedures Manual) states that members should be aware that the manner of handling certain significant items may cause offense or compromise the sanctity of the item, and steps can be taken to observe cultural sensitivities.

In particular, the document offers the following guidance on medicine bags:

A medicine bag is a small pouch containing objects of spiritual significance to its owner, such as stones, herbs and other objects intended to bring health, protection or healing. The medicine bag is considered sacred and traditionally the objects within should only be handled by its owner or an Elder.

If a search of a medicine bag or other religious or spiritual articles is required, the examining officer should request the owner open the pouch and manipulate the objects for visual inspection if possible and if safe to do so. Many Aboriginal cultures prescribe that women in particular should not touch the contents of a medicine bag due to the belief that women are far more spiritually powerful than men, and even simply viewing the contents of a bag will alter their efficacy. Therefore, members should make efforts to have a male officer preside over the examination of the medicine bag.

The arresting officer, with approval of the Jail NCO, should allow the person to keep the medicine bag in their possession while in custody if it is deemed safe to do so. If the owner cannot be permitted to retain their medicine bag, the owner should place the medicine bag into a property bag separate from other possessions, and place the property bag into the larger property bag containing

their remaining possessions. This is because a medicine bag should only be handled by its owner or an Elder, and should not be touched by others. When returning the item, the owner should be permitted to remove the medicine bag from the property bag so that no one else touches it.

Appropriate handling of sacred objects will likely differ depending on the object and nation. In order to avoid improperly handling sacred items, it may be necessary, where practical, to consult an Elder or the owner of the property.

While practices may vary between Indigenous communities, medicine bags are a good illustration of the need to preserve the sanctity of significant items from a cultural sensitivity perspective. It is recommended that the OPS adopt a similar approach as the Vancouver Police Department, whom upon consultation with Elders and Indigenous communities, incorporated a guideline into their Regulations and Procedures Manual.